

STAT

ARTICLE APPEARED
ON PAGE 22

NEW YORK TIMES MAGAZINE
7 June 1981

THE PENTAGON PAPERS A DECADE LATER

By Floyd Abrams

Shortly after 7 o'clock on the evening of June 14, 1971, President Nixon spoke by telephone with his Attorney General. They agreed upon the text of a telex, which was immediately dispatched to the offices of The New York Times in New York. Respectful in tone, its substance was ominous.

For two days, The Times had been publishing documents included in a detailed, classified Pentagon study, along with articles based upon the study. Now, in his telex, Attorney General John N. Mitchell was charging The Times with having violated the Espionage Act. He called upon the newspaper to halt further publication, which would cause "irreparable injury to the defense interests" of the nation, and to return the classified documents to the Department of Defense.

Two hours later, in a telex signed by Harding Ban- croft, executive vice president of the paper, The Times declared that it would "respectfully decline" the Attorney General's demand "for the same reasons that led us to publish the articles in the first place." The next day, for the first time in American history, the Government sought — and won — a temporary court order barring a newspaper from publishing a news article. On June 30, after 15 days of frantic legal battles amid a firestorm of publicity, the United States Supreme Court ruled against the Government. The Times and other newspapers involved resumed publication of what had long since become known as the Pentagon Papers.

A decade later, the feverish mood of those days is difficult to recall. Richard Nixon spoke of them in his memoirs as "tense and bitter," and they were all of that as the nation suffered through the trauma of the Vietnam War. The year before had seen the American invasion of Cambodia and the killings on the Kent State campus. Responses to The Times's publi-

divided over the war. Opponents of the war, such as Representative Edward I. Koch, of New York, and Prof. Hans Morgenthau, of the University of Chicago, strongly favored publication. Supporters of the war, ranging from Ronald Reagan to Jimmy Carter, were harsh in their criticism of The Times. For all parties involved in the case, the atmosphere was emotionally charged. When Whitney North Seymour Jr., for example, the United States Attorney who

represented the Government in the case, entered the courtroom in New York, he was greeted by the spectators with hisses.

The Pentagon Papers case has been examined in the memoirs of many of its participants, including Messrs. Nixon, Kissinger, Haldeman, Ehrlichman and Colson. Transcripts of those court sessions closed to the public because of the airing of classified materials have since been released. Harrison Salisbury, in his recent biography of The Times, has described in detail the legal battles over the papers. What this article attempts is something of a different order: an effort to assess, in the light of the decade past, and with the help of interviews with more than a score of participants, the effects of publication of the Pentagon Papers and the court case that followed.

In a variety of ways, the events of 10 years ago constituted a watershed in American life for the Government, the press, the law and the public. Some of the impact has been totally unpredictable — the unlikely trail of events, for instance, that led from publication of the Papers to the creation of the Nixon Administration's "plumbers" to plug news leaks to the ultimate fall of the Administration itself. Some elements of any assessment are necessarily conjectural — the degree, for example, to which the Papers altered political attitudes of Congress and public toward the war. Former Secretary of State Cyrus R. Vance, for one, believes publication ultimately shortened the conflict. Still other aspects seem quite clear. None of the dire consequences of publication foreseen by the Government came to pass. The disclosure signaled the end of an era of press-Government collaboration. It also led to a Supreme Court decision that was both a major victory for the press in its battle against censorship by any branch of government and a reminder that the larger struggle was still to be decided.

In all such judgments, the stance of the observer has special relevance. As one of the lawyers for The Times in the case, and as one who has often represented journalists in other cases involv-

CONTINUED